

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**PATRICIA M. HENRY**

Claimant

VS.

**SHAWNEE COUNTY**

Respondent

Self-Insured

)  
)  
)  
)  
)  
)  
)

Docket No. 131,761

**ORDER**

Claimant and respondent both appeal from the September 25, 1998 Order entered by Administrative Law Judge Bryce D. Benedict. The Appeals Board heard oral argument on August 25, 1999.

**ISSUES**

Claimant seeks post-award medical treatment and penalties for respondent's failure to pay medical expenses. Respondent seeks to terminate claimant's right to medical treatment arguing claimant has suffered subsequent accidents and aggravations of her previous injury. Judge Benedict denied claimant's request for payment of medical expenses and penalties. He also denied respondent's request to terminate medical benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Findings of Fact**

1. On August 15, 1988, while working for respondent as a corrections officer, claimant slipped and fell, injuring her back. The parties stipulated to accidental injury arising out of and in the course of employment.
2. An award was entered on March 13, 1991 for an 8 percent permanent partial disability to the body as a whole based upon the functional impairment ratings of Dr. Sergio Delgado and Dr. Nathan Shechter. Both physicians diagnosed soft tissue/musculoligamentous injury to the low back. In that award, the ALJ "also found that claimant is in need of continuing treatment for her back complaints as a result of the accidental injury." The ALJ further found that "Dr. Delgado has testified that he is willing to see claimant for her back problems and she will be granted future medical treatment with Dr. Delgado in the future without the need for further application therefore."

3. The Award was appealed to the Director. Finding the opinion of Dr. Shechter to be more convincing than the opinion of Dr. Delgado, the award was increased to a 10 percent permanent partial disability. In all other respects the Award by the ALJ was affirmed by the Director in his June 27, 1991 Order.

4. By an agreed Order dated September 5, 1991,<sup>1</sup> claimant was granted a change in her authorized treating physician. Future medical treatment was ordered to be with Dr. Mary Ann Hoffman.

5. Claimant was seen by Dr. Hoffman a few times in 1991 and 1992. She was seen twice in 1993. On October 22, 1993 Dr. Hoffman released claimant "p.r.n.".

6. Claimant was not seen again until March 3, 1995. At that time claimant reported that about a week before, she had been sitting up in bed reading when she sneezed and felt a pop in her back. There was an immediate onset of low back pain and numbness in her leg. The next day she could barely get out of bed and the pain and numbness had since gotten progressively worse. Claimant was diagnosed with an acute lumbar strain and was prescribed muscle relaxers, pain medication and physical therapy. Claimant was taken off work, but by March 8, 1995, claimant's pain had gotten so bad that Dr. Hoffman recommended she be hospitalized and put in traction. Claimant also received an epidural injection for the first time since 1991. However, the MRI scan obtained April 10, 1995 was read as showing no interval changes compared to the MRI of November 5, 1991. Claimant testified that she eventually returned to the same condition she was in before this incident.

7. Dr. Hoffman wrote that "it is my opinion that the acute exacerbation of Ms. Henry's chronic low back pain was precipitated by the pop that she felt in her back while sitting in bed reading." However, despite this "acute exacerbation of a chronic lumbar strain[,] I do not feel that her overall condition has worsened or her disability has increased. . . . I do not feel at this time she has a worsening of her condition, just exacerbation of her previous injury."

8. On December 8, 1995, claimant was involved in an automobile accident. The vehicle in which she was traveling was struck in the rear by another vehicle. Claimant reported increased pain in her low back and pain and numbness in her right leg from this accident. The accident report shows that claimant described to the investigating officer that her back was stiffening up so bad that she was unable to get out of her car at the police station. Claimant was then taken to the emergency room at Lawrence Memorial Hospital. Those records reflect claimant reported she had severe low back pain and spasms with pain radiating to her leg as a result of that accident. A CT scan of the lumbar

---

<sup>1</sup> The Order is dated "this 5th day of September, 1991," but describes the date of hearing as September 18, 1991. Only the day of the month is handwritten; the month and year are typewritten. The Order is stamped "received" November 5, 1991, and was most likely signed and entered on that date.

spine was taken on December 21, 1995, which showed mild bulging at L5-S1, but no evidence of a herniated disk or other abnormality.

9. At the September 23, 1998 hearing, claimant said this incident "was no worse than any of the other chronic times I would have . . . where I would have a lot of pain and then I'd be okay for a while."

10. Thereafter, claimant was treated by Dr. Hoffman through May 15, 1996. She did not return again until April 15, 1998 when she reported that, as result of coughing and sneezing from bronchitis, she developed severe pain in her back radiating to her buttocks with numbness into both feet. Claimant testified that after these incidents her condition again returned to what it was before.

11. On April 30, 1998, after correspondence back and forth between counsel for claimant and respondent, claimant filed an Application for Preliminary Hearing seeking additional medical treatment and payment of past medical expenses. Demand was also made pursuant to K.S.A. 44-512a that respondent pay all medical compensation due pursuant to the Order of September 5, 1991. Claimant's Application to Determine Penalty was filed July 21, 1998, seeking payment of the March 24, 1995 medical expense with Anaesthesia, P.A., for the epidural nerve block ordered by Dr. Hoffman.

12. On September 9, 1998 respondent filed an Application for Preliminary Hearing and a Motion to Terminate Medical Treatment under Agreed Award.

### Conclusions of Law

The Workers Compensation Act places the burden of proof upon claimant to establish his/her right to an award of compensation and to prove the conditions on which that right depends.<sup>2</sup> "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>3</sup> The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.<sup>4</sup>

When the primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of the

---

<sup>2</sup> K.S.A. 44-501(a); *see also* Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

<sup>3</sup> K.S.A. 44-508(g). *See also* In re Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>4</sup> K.S.A. 44-501(g).

primary injury.<sup>5</sup> It is not compensable, however, where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause.<sup>6</sup> Although claimant's condition waxed and waned, the Appeals Board finds that there was neither a new injury nor an intervening accident following her work related accident until the automobile accident of December 8, 1995. The March 1995 aggravation, therefore, is compensable as a direct and natural consequence of the original August 15, 1988 accidental injury at work.

Because the evidence indicates that claimant's condition has returned to the level it was at before the December 8, 1995 aggravation, respondent's motion to terminate claimant's right to request authorized medical treatment in the future is denied. But the September 5, 1991 Order should be modified to award future medical upon application to and approval by the Director.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the September 25, 1998 Order is modified to order future medical upon application to and approval by the Director, for respondent to pay the March 24, 1995 medical expense of \$355 to Anaesthesia, P.A., and a 10% penalty of \$35.50 to claimant.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2000.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Robert E. Tilton, Topeka, KS  
Ronald J. Laskowski, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director

---

<sup>5</sup> Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

<sup>6</sup> Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997); Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973). *See also* Bradford v. Boeing Military Airplanes, 22 Kan. App. 2d 868, 924 P.2d 1263, *rev. denied* 261 Kan. 1082 (1996).